

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-1008

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA :

-against- :

EDWARD GRIMES :

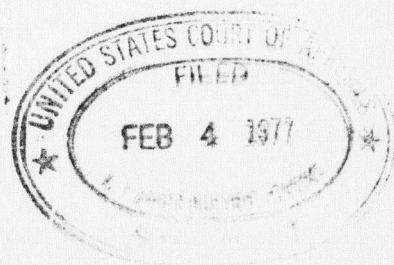
Defendant-Appellant :

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B
P/s

BRIEF FOR DEFENDANT-APPELLANT

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New York, New York 10013



77-10008

To be argued by
ABRAHAM SOLOMON

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA :

-against- :

EDWARD GRIMES :

Defendant-Appellant :

-----X

BRIEF FOR DEFENDANT-APPELLANT

This is an Appeal From a Judgment
of Conviction Rendered in the
United States District Court For
The Southern District of New York

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Preliminary Statement

This is an appeal by the defendant-appellant from his conviction, after a trial by a jury, held in the United States District Court, Southern District of New York (Weinfeld J.) on November 10 and 11, 1976 on all counts as follows:

That he participated in two (2) separate bank robberies of the Chemical Bank located at 395 Third Avenue, Manhattan, on May 13th and July 2nd, 1976. With respect to each robbery, he is charged with three (3) separate violations of the law in three (3) separate counts.

Counts 1 and 4 charge a violation of Title 18, United States Code, Section 2113(a).

Counts 2 and 5 charge a violation of Title 18, United States Code, Section 2113(d).

Counts 3 and 6 charge that he unlawfully and knowingly did use or carry a firearm during the commission of a felony.

INDICTMENT

S 76 Cr. 940

COUNT ONE

The Grand Jury charges:

On or about the 13th day of May, 1976 in the Southern District of New York, EDWARD GRIMES, the defendant and Alton Fields,

unlawfully, wilfully and knowingly, by force, violence and intimidation, did take and attempt to take from the person and presence of another money and property in the approximate amount of \$12,852 which then belonged to and was in the care, custody, control, management and possession of the Chemical Bank, 395 Third Avenue, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT TWO

The Grand Jury further charges:

On or about the 13th day of May, 1976, in the Southern District of New York, EDWARD GRIMES, the defendant and Alton Fields, in committing and in attempting to commit the acts charged in Count One of this Indictment, did put in jeopardy the life of a person and persons by the use of a dangerous weapon and device, to wit, a handgun.

(Title 18, United States Code, Sections 2113(d) and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 13th day of May, 1976, in the Southern District of New York, EDWARD GRIMES, the defendant, and Alton Fields unlawfully, wilfully and knowingly did use and carry a firearm, to wit a handgun to commit and during the commission of

a felony for which he may be prosecuted in a Court of the United States, to wit, the felonies charged in Counts One and Two of this Indictment.

(Title 18, United States Code, Sections 924(c)(1) and (2).)

COUNT FOUR

The Grand Jury further charges:

On or about the 2nd day of July, 1976 in the Southern District of New York, EDWARD GRIMES, the defendant, and another, unlawfully, wilfully and knowingly, by force, violence and intimidation, did take and attempt to take from the person and presence of another money and property in the approximate amount of \$15,110 which then belonged to and was in the care, custody, control, management and possession of the Chemical Bank, 395 Third Avenue, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 2nd day of July, 1976, in the Southern District of New York, EDWARD GRIMES, the defendant, and another, in committing and in attempting to commit the acts charge in Count Four of this Indictment did put in jeopardy the life of a person and persons by the use of a dangerous weapon and device, to wit,

a handgun.

(Title 18, United States Code, Section 2113(d) and 2.)

COUNT SIX

The Grand Jury further charges:

On or about the 2nd day of July, 1976, in the Southern District of New York, EDWARD GRIMES, the defendant, and another, unlawfully, wilfully and knowingly did use and carry a firearm, to wit, a handgun, to commit and during the commission of a felony for which he may be prosecuted in a Court of the United States, to wit, the felony charges in Counts Four and Five of this Indictment.

(Title 18, United States Code, Section 924(c)(1).)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

Statutes Involved

Title 18, U.S.C. §2113 Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny --

Shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than \$10,000 or imprisoned not more than twenty-five years, or both.

Title 18, U.S.C. §924

(c) Whoever-

(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or

(2) carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States,

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony.

Analysis of the Testimony

The following witnesses were called by the Government.

Beulah McKinney

John Holmes

David Faith

Kenneth O'Brien

Edwin J. Mahalic

Verdell Stennett

Thomas F. Lagtol

Bernard Ellenberg

Beulah McKinney testified that on May 13th, 1976 she was employed in the Chemical Bank, located at 395 Third Avenue at 28th Street for a period of 8 years.

About noontime she heard a commotion, looked up and heard a man saying, "Don't move nobody". He was standing close to her desk with a gun in his hand-he also said "Sister, I don't want to have to kill you."

About the same time another man ran across the floor of the bank, vaulted the teller's area, took money from the tellers. They were wearing disguises on their faces. S.M. 19, 20 & 22.* She identified the defendant Grimes as one of the aforesaid two (2) men. S.M. 23-24

On July 2nd, 1976 she was also working at the same bank.

*All numerals are references to minutes of trial.

On that day - there was another robbery, around noontime, in the same manner by two (2) men as it occurred on May 13, 1976. S.M. 25
They were the same type of masks as on May 13, 1976. S.M. 26
They were the same two men who had come into the bank, the first time, with this difference that their activities were reversed. S.M. 27

On page 35 she was asked the following questions.

Q. So that the record is clear, with respect to the May 13th robbery, of the Chemical Bank did you have occasion to observe the defendant Edward Grimes without his mask?

A. When he was leaving the bank, yes at the door.

Q. What about on July 2nd?

A. No - I did not see his face. S.M. 35-36.

On cross examination she testified that "on May 13th she saw a gun in the hands of the man standing in the bank. She did not see a gun on the person that vaulted. On July 2nd they both had guns. S.M. 37

Q. How long a period of time did you see the alleged faces of these bank robbers, one or both of them, after the mask was taken off?

A. Enough time that I would be able to recognize them again. S.M. 45

Q. Did you ever say to anybody that it was only a split second?

A. I may have mentioned that but when I say split second, it was enough to be able to recognize him. S.M. 59

John Holmes testified that on May 13, he was an officer's assistant at the Chemical Bank, 395 Third Avenue, that on that day around 12:30 two (2) men entered the bank; one stood by the door; the other jumped over the counter. The man at the door had a gun and told everybody not to move. The man at the door wore a mask. S.M. 68 He supervised an audit conducted at the bank and the loss was \$12,852. S.M. 68

On July 2nd two (2) men entered the bank; one man stood by the door with a gun; the other man went over the counter and went through the teller drawer taking money. S.M. 69

The man by the door resembled the man that had gone over the counter in the first robbery and the man that had gone over the counter in the second robbery resembled the man standing by the door in the first robbery. S.M. 70

On this occasion he supervised an audit of the bank and \$15,110 was taken. S.M. 71

David Faith testified that on July 2nd the bank was held up; one person was at the front door with a gun, another person

went over the teller's counter. S.M. 82 They were wearing masks, but he had an opportunity to see the man at the door. He then recognizes the defendant. S.M. 84 He had an opportunity to see Grimes without a mask. S.M. 85 He saw Grimes holding a handgun pistol. S.M. 85

By Mr. Schatz:

Q. Mr. Faith as you sit here in Court today, is there any doubt in your mind that Mr. Grimes is the individual you saw holding the gun on July 2nd?

A. There is no doubt in my mind. S.M. 101

Kenneth O'Brien testified that on May 13 of this year this is what happened. "He was working in the teller's area. Two guys walked into the bank and said this was a holdup. One guy jumped over and we were robbed. They were both wearing like a stocking or ski mask. He had no occasion to see either of these men without the mask on. S.M. 102

He was working at this branch on July 2nd and on that day they were robbed again. He was working at the head teller section and it seemed to him that it was done in the same fashion as the May 13th robbery except for the following "It seems that the person that stands at the door as the one that jumped over and the person that jumped over was the one that stood at the door.

Q. So that it is clear, you say you believe that the person who was the vaulter on May 13th was the person by the door on July 2nd?

A. Yes. S.M. 103

He did not observe the face of either bank robber on July 2nd. S.M. 103

Edwin J. Mahalic testified; he is employed by Chemical Bank, that on August 21, 1975, he was working at the branch located at 111-01 Queens Boulevard. At about 12 o'clock, one fellow came in and stood by a writing desk with a gun at his side and yelled out "Don't anyone move. I don't want to kill anybody." Another fellow came in, jumped onver the counter and proceeded to rifle the tellers drawers: They both then ran out of the door. They had ski masks on; he was unable to see the bandits. An audit was made and \$4,593 was taken. S.M. 115-116

Verdel Stennett

She testified that she is employed by The City of New York since 1967. She knows the defendant Edward Grimes and used to go out with him. She also met some of his friends. She identified a photograph of Alton Jerome Fields who was a co-defendant in the first indictment. She had clothing in a box that belonged to Grimes and gave them to the F.B.I. S.M. 126 She said that the pants shown to her are Eddies (Grimes) S.M. 127

Thomas T. Lagatol

He is a special agent of the Federal Bureau of Investigation and is assigned to the bank robbery squad. He knows Eddie Grimes. He interviewed Miss Stennett and she gave him a pair of pants and they were in his possession since then. (138)

He knows Beulah McKinney and interviewed her. He did not show her any bank surveillance photographs. There was a finger-print analysis of the counter where the vaulter went over on May 13th and there was no latents that matched Mr. Grimes finger-prints. S.M. 155

Bernard Ellenberg testifies:

He is in the box business and on May 13th was in the Chemical Bank. Suddenly he heard a voice say "Don't anyone move." He heard it a second time. S.M. 147 He saw some one run towards the counter, vault it. He had a shopping bag. He told the teller "Open your drawers, all your drawers." He scooped out money from one teller, then another man leaped over the counter and ran out. He had some type of a stocking mask on. He never saw the man without a mask on. (S.D. 148)

This brief is filed pursuant to the decision in Anders
v. California, 386 U.S. 738.

CONCLUSION

FOR THE FOREGOING REASONS THE MOTION
PURSUANT TO ANDERS v. CALIFORNIA
SHOULD BE GRANTED AND COUNSEL SHOULD
BE RELIEVED.

Respectfully submitted,

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